

COMMONWEALTH OF KENTUCKY  
FRANKLIN CIRCUIT COURT  
DIVISION II  
CIVIL ACTION NO. 06-CI-00610

COMMONWEALTH OF KENTUCKY,  
OFFICE OF THE ATTORNEY GENERAL  
*Ex rel.* Gregory D. Stumbo in his official  
Capacity as Attorney General of the  
Commonwealth of Kentucky

PETITIONER

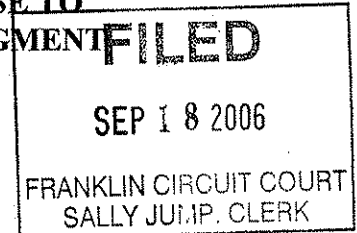
v. **SUPPLEMENTAL MEMORANDUM IN RESPONSE TO  
RESPONDENTS' MOTION FOR SUMMARY JUDGMENT**

STATE BOARD OF ELECTIONS et. al.

and

SECRETARY OF STATE, TREY GRAYSON

RESPONDENTS



\* \* \* \* \*

*May it please the Court:*

The Attorney General submits the following supplement to his Response to the Respondents' Motion for Summary Judgment to correct the record concerning the disenfranchisement of voters during the May 2006 Primary Elections.

During the May 16, 2006 primary election, pursuant to the Agreed Order entered by this Court May 15, 2006, eligible voters purged by the Respondents on April 10 and April 11, 2006 were provided a legal avenue to vote if they were willing to submit to the conditions set forth in the order. These conditions were not required of other eligible voters, nor would they have been required of the purged voters had their names been placed on the list of inactive voters as required by KRS 116.112. The Attorney General agreed to these conditions because it was believed that due to time constraints no other option existed which would provide the purged voters an opportunity to vote. There is no

statute which provides for intentionally purged voters to have their voter registration reinstated.

Following the May Primary, a significant issue arose as to the number of purged voters who appeared at the polls to vote in that election, and of those the number who actually went on to make the effort necessary to vote once they were told they were not registered. It is believed some purged voters did not vote because either they were not informed of their right to vote or because they failed or refused to meet the conditions the order imposed. That these eligible voters were denied their right to vote can be reasonably inferred from the facts in the record. People were clearly disenfranchised by the Secretary of State and the State Board of Elections, in violation of Kentucky law.

In an attempt to discover how many voters purged in April, 2006 did appear at the polls in May and were able and willing to prove eligibility to vote under Kentucky law, the Attorney General issued the following interrogatory:

**INTERROGATORY NO. 21:** Please provide the names and addresses of registrants removed from Kentucky's statewide voter database on the above listed date(s) as well as the names and addresses of those removed registrants who voted under the terms of the Agreed Order entered May 15, 2006 in the May 16, 2006 primary election.

In their Answer, the Respondents identified 196 people. The Answer was inconsistent with the information the Attorney General had obtained from the 115 of the 120 County Clerks in the Commonwealth, which suggested the number was far higher. Therefore, a letter was written to counsel for the Respondents asking why the information provided in the Respondents' Answer was incomplete and failed to identify at least 63 people whom the records from the County Clerks identify as having attempted to vote. The Attorney

General did not receive a response to this letter nor did the Respondents supplement their interrogatory answers prior to the date response briefs were due in this matter. However, in their Motion for Summary Judgment, Respondents stated the 63 people identified by the Attorney General did not receive “voter credit.”

No explanation was provided in the Respondent’s brief as to what not receiving “voter credit” meant. Further, because the Respondents had not amended their answer to Interrogatory No. 21, it was reasonable to believe they were not asserting that the 63 people identified by the Attorney General “voted under the terms of the Agreed Order entered May 15, 2006 in the May 16, 2006 primary election.” To the contrary, the only reasonable conclusion the Attorney General could draw was that the Respondents were asserting that the people identified by the Attorney General did not vote in the Primary Election.

On September 12, 2006 the Respondents served on the Office of the Attorney General a supplemental answer to Interrogatory No. 21. The answer provides a discussion of the reasons the 63 people identified by the Attorney General did not receive “voter credit,” and asserts their votes were counted. However, the answer also states it is impossible to prove that any given person’s vote was counted. Still the Respondents’ seek a retraction of the statement that the 63 voters in question were disenfranchised. *See Supplemental Answer p. 5.* Yet, with no information in the record which either proves or disproves whether the 63 people in question voted, a retraction is not warranted. Instead the Attorney General acknowledges the current status of the record, as described above, and awaits the County Clerks’ responses to the August 24 letters issued by the State Board of Elections. *See Exhibit 1 to Respondents’ Amended Supplemental Answers.*

Of greater concern to the Attorney General is the fact that the Respondents have not provided a complete answer to Interrogatory No. 21. No indication is given in the Respondents' answer that they have made any attempt to independently determine how many people purged in April proved their eligibility and attempted to vote in the May Primary. The figure currently stands at 259, the 196 the Respondents identified and the 63 the Attorney General found through an informal survey. Given the preliminary nature of the Attorney General's survey of the County Clerks, it is believed the group of purged voters not given "voter credit" is much larger than 63 people. Further, there is no indication the Respondents have attempted to identify how many other eligible voters who were purged due to the failure to use the "last date voted" criteria for the database matching. The Respondents admit this omission was a mistake, and logic dictates that at least another 500 eligible voters were purged, given that 259 were identified during an election which only had a 30% turnout. Most of those voters could be identified simply by using the existing database matching program and adding the necessary criteria.

Nevertheless, the purged voters who did vote were burdened by conditions placed upon their right to vote as a result of the purges, and therefore were harmed even if their vote was counted. Furthermore, those people the Respondents claim voted but did not receive "voting credit" will still face the prospect that they will be prohibited from voting in the General Election along with the remainder of the eligible voters who were purged and did not attempt to vote in the May Primary. Therefore, wrongly purged voters will surely be disenfranchised in the November General Election regardless of whether the votes of the 63 people the Attorney General identified were counted during the May Primary.

Consequently, the Respondents' Amended Supplemental Answers to Petitioner's Interrogatories do not raise or change any factual issue which materially affects the Attorney General's arguments in this case. The uncontroverted facts are that the Board did not approve the voter purge, the purge was not conducted in a manner which complied with KRS 116.112 and, as a result, eligible voters were removed from the statewide voter registration database. The result is that individual voters' rights have been harmed and additional voters are at risk of harm. Further, the Commonwealth of Kentucky continues to experience harm because its democratic processes have not and are not being conducted in a manner consistent with state law.

Wherefore, the Attorney General respectfully requests the Court to enter Summary Judgment in his favor.

Respectfully submitted,



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## CERTIFICATE OF SERVICE

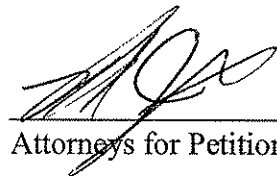
This is to certify that a true and correct copy of the foregoing Supplemental Memorandum in Response to Respondents' Motion for Summary Judgment has been served upon the following, by mail, first-class, postage prepaid, on this the 18<sup>th</sup> day of September, 2006:

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General Counsel  
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